

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 99 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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**AGRAWAL ENTERPRISE THROUGH P.O.H. VIPULBHAI G. -
Applicant(s)**

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR PARTHIV B SHAH for Applicant(s) : 1,
MR DIPEN DESAI, APP for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/11/2007

ORAL JUDGMENT

1.The petitioner is a Finance Company which has
challenged an order dated 6.12.2005 passed by

Judicial Magistrate First Class, Balasinore, as upheld by an order dated 8.2.2006 passed by the learned Additional Sessions Judge, Nadiad in Criminal Revision Application filed by the petitioner.

2. The petitioner had entered into lease finance agreement with respondent no.2 by virtue of which the petitioner financed a motor vehicle namely truck(tanker) bearing registration no. GJ-6-U-7681. It appears that the police authorities inspected the truck and it was found that the same was being used for the purpose of carrying liquor contrary to the provisions contained in Bombay Prohibition Act. The complaint and charge-sheet was filed before the concerned Court. During the pendency of the criminal case, the petitioner preferred an application before the learned Magistrate seeking interim custody of the truck in question. Same was granted by an order dated 7.9.2005. This release of the truck was subject to several conditions being fulfilled by the petitioner. One condition was that the petitioner shall give bond of Rs. 12 lakhs before the Court. Another important condition was that the petitioner shall not make any changes with respect to the vehicle in question and that the petitioner should not sell, gift or in any manner alienate the ownership of the truck or transfer the same in favour of any

other person. Subsequently, the petitioner filed a fresh application before the concerned Court praying for modification of the conditions noted above and to permit the petitioner to sale the truck. In the application, it was stated that the accused i.e. respondent no.2 herein had not paid any installment after obtaining loan of Rs. 3,79,000/- from the petitioner on 22.8.2006. It was stated that till day he is not arrested nor appeared before the Court. Under the circumstances, it will take a long time before the trial is conducted. It was therefore, prayed that the petitioner be permitted to dispose of the truck, failing which, the condition of truck will deteriorate and the petitioner shall sustain serious damage. This application came to be dismissed by the learned Magistrate by impugned order dated 6.12.2005. In doing so, the Magistrate observed that if ultimately the ownership of the truck is claimed by the accused, it would not be possible to bring back the truck, if the petitioner is allowed to sale the same. It was also observed that if at any stage of the trial, it is necessary to produce the truck, such production would not be possible. On this ground, the application of the petitioner came to be rejected. On similar ground, Revision Application of the petitioner also came to be turned down.

3. Having heard learned advocate Shri Parthiv Shah

for the petitioner and learned APP Shri Dipen Desai for the State, I find that the petition is required to be allowed.

4. Respondent no.2 had at no stage opposed any of the applications of the petitioner. He has not even cooperated with the investigation or the trial. The conclusion of the trial would therefore, take a long time. The petitioner has prima facie established the ownership rights over the truck as the truck was possessed by respondent no.2 under the Higher Purchase Agreement. Respondent no.2 has denied the averments made by the petitioner that after obtaining loan in August 2003, no amount was ever repaid by him.
5. Considering all these aspects of the matter, I do not find that the application of the petitioner should have been rejected only on the ground that ultimately the accused may stake his claim over the truck. In any case, the interest of respondent no.2 would be sufficiently safeguarded since the petitioner is already directed to give bond of Rs. 12 lakhs.
6. It cannot be denied that if the vehicle is kept un-used, either the petitioner shall have to incur a substantial amount of money for its repair and maintenance or that the vehicle may deteriorate and may become worthless by the time

trial is over. It is pointed out to me that under somewhat similar circumstances, two learned Judges of this Court in order dated 29.3.2005 passed in Criminal Revision Application No.767/2004 and order dated 31.1.2007 passed in Special Criminal Application No.1055/2006, granted permission to sale the vehicle to Bank or Financial institution.

7. Under the circumstances, by quashing the impugned orders dated 6.12.2005 and 8.2.2006, the petitioner is permitted to dispose of the said vehicle subject to the condition that the petitioner shall produce full details of the purchaser and the copy of Registration Book indicating the sale instances before the trial Court as soon as sale is affected.

8. With these directions, the petition is disposed of. Rule made absolute to the above extent.

Direct service is permitted.

(Akil Kureshi, J.)

(raghu)